

Suspension/Expulsion of Students with Disabilities

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Introduction

This section outlines the considerations and procedures applicable to suspensions and/or expulsions of students with disabilities. Students with an active IEP are subject to school discipline based on the California Education Code and, if applicable, based on a charter school's charter document. The California Education Code (Section 48900 et. Seq.) lays out the offenses subject to suspension or expulsion, as well as the required procedures for suspending and/or expelling a student. Per Federal Law, there are additional procedures and protections for students with disabilities, or who may have a disability, which must be followed.

This section will summarize the additional procedures required to suspend and/or expel a student with a disability, or a suspected disability. It will not detail the suspension/expulsion procedures generally, nor the suspendable/expellable offenses – for that information, please refer to Cal Ed Code 48900 et seq, your charter, and any other statutes, regulations and cases relevant to suspension and expulsion in general.

Definitions

Suspension – an involuntary removal of a student from their normal school instructional setting – this encompasses both an out of school suspension and an in school suspension (Ed Code 48925)

Expulsion – a permanent removal of a student from his or her regular educational setting due to a violation of serious schools rules or policies. The length and reason for expulsion vary by state and school district.

Suspendable offense – an offense which if occurring at school, at a school event, or in transit to or from school, may legally result in a suspension

Other Means of Correction - except for offenses included in Ed Code 48900 (a) - (e), a school must attempt other means of correction before suspending a student.

Extension of Suspension meeting – a meeting at which a student's suspension may be extended until an expulsion hearing (Ed Code 48911(g))

Expulsion Hearing - a hearing, typically by the governing board, to determine whether to expel a student recommended for expulsion by a principal or superintendent

Manifestation Determination - an meeting at which it is determined whether a student's disability or failure to implement the student's IEP, caused the offense for which the student is being suspended or expelled.

Interim Alternative Placement - a 45 day involuntary placement for students who have committed one of three statutory offenses

Suspension of a Student with a Disability

Disciplinary provisions, enshrined in the California Education Code, Ed Code 48900 et seq and/or included in a Charter Schools chartering document, apply to students with disabilities. These provisions apply when a student commits one of these acts that are grounds for suspension/expulsion:

- While on school grounds;
- While going to or coming from school;
- During the lunch period on or school grounds;
- During, or while going to or coming from, a school sponsored activity

The student's disability status is relevant to the application of, and procedure, of school discipline. Students with disabilities have extra protections with respect to student discipline. The basic issue is whether the student's disability, or a failure to implement the student's IEP, resulted in the disciplinary infraction. IDEA, then, compels schools to examine this issue to determine if disciplinary action should go forward, when a disciplinary removal will exceed ten days. In addition, IEP teams should also be aware of and consider whether program changes are required when a student with a disability commits a suspendable offense.

Which students receive special education disciplinary protections?

1. Student currently in special education
2. Student in the process of assessment for special education
3. Student whom the LEA had a basis of knowledge that the student might be a special education student
4. Student with a 504 plan

The disciplinary protections are triggered when a change of placement for a student would occur. Per Federal Regulations, this occurs when a series of removals total more than ten

consecutive days during a school year, or a series of removals constitutes a pattern. A pattern occurs when the cumulative suspension days exceed ten, the behavior resulting in the suspensions is substantially similar for all of the suspensions, and because of additional factors including length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. (34 CFR 300.536)

Manifestation Determination

IDEA requires a Manifestation Determination to be completed if a removal for more than ten days will occur. The purpose of this necessary meeting is determination of whether the conduct for which the student is being suspended and/or expelled, by answering the following

This requires an IEP meeting with the following members:

- Case Manager
- Administrator
- General Education teacher
- Parent (or other holder of Educational Rights for the relevant student)

If the student has a 504 plan, but no IEP, include the same required members as for an IEP team. In addition, if an assessment is completed, it is strongly recommended that the individual who conducted the assessment be at the meeting.

An assessment is NOT required for Manifestation Determination, per IDEA.

Procedure for a Manifestation Determination

A Manifestation Determination must be held within ten school days after the decision to suspend/expel a student that would constitute a change of placement, which is defined as a removal of more than ten days. (34 CFR 300.530(e)) Appropriate notice and procedural safeguards must be given to parents/holders of educational rights on the date the decision is made. The meeting's purpose is to review the relationship between the student's disability and the conduct for which the student is being suspended/expelled. The LEA, the parent and all relevant members of the IEP team must be invited to the meeting.

At the meeting, the team must consider evaluation/diagnostic results, observations, information supplied by parents, the IEP, and current placement. (34 CFR 300.530(e)) Based on this, the team answers two questions, whether:

1. The conduct in question was caused by, or had a direct and substantial relationship to the disability; or
2. The conduct in question was a direct result of a failure to implement the IEP (or 504 Plan).

If the team answers “Yes” to either of these two questions, then it has determined that the conduct in question IS a manifestation of the student’s disability, and disciplinary proceedings CANNOT proceed.

Further, if the conduct is found to be a manifestation of the student’s disability, the LEA must conduct a Functional Behavioral Analysis and implement a Behavior Improvement Plan for the student. In other words, if the team determines that the conduct was sufficiently related to the disability, or a result of failure to implement the IEP, the issue becomes one for the IEP team to develop and implement a more effective plan, including a BIP, to attempt to prevent a repetition of the conduct. If the district had previously conducted an appropriate FBA, it need not conduct a new FBA, but should meet to develop or revise the current BIP and any other behavioral interventions. If there is already a BIP in place, the IEP team should meet to review the BIP and modify it, or any other part of the IEP, to address the behavior. Finally, the student must return to their existing placement, unless the IEP team, with parent signed consent, decides to change placement.

If the team answers “No” to both questions, then discipline may proceed in the same fashion as with a student without an IEP or 504 plan. Importantly, a Manifestation Determination does NOT require parent consent. On the form, the parent may sign to indicate their disagreement with the decision, and there is an expedited appeal process to the Office of Administrative Hearings – this must occur within twenty school days of the date on which the parent requested the hearing. (20 USC 1415(k)(2); 34 CFR 300.53(c))